



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

November 23, 2011

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Defense of Marriage Act (DOMA) Litigation

I have reviewed the Department of Defense (DoD) General Counsel's memorandum of November 15, 2011, and concur with his assessment of the *McLaughlin v. Panetta* litigation that there are no compelling or sufficiently unique military interests at stake that would justify a variation from the determination of the President and the Department of Justice (DoJ) that Section 3 of DOMA is unconstitutional and should not be defended in court. The views of the Chief of Naval Operations (CNO) and the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs are contained in the accompanying memoranda.



Ray Mabus

Attachments:
As stated



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
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MEMORANDUM FOR SECRETARY OF THE NAVY

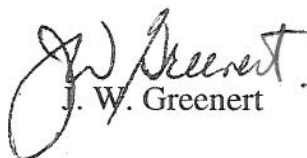
FROM: Chief of Naval Operations

SUBJECT: Defense of Marriage Action (DOMA) Litigation

This responds to the DoD General Counsel's memorandum of November 15, 2011, and his preliminary assessment of the DoD's position in the *McLaughlin* lawsuit, the first constitutional challenge to DOMA in the context of military and veterans' benefits. The DoD General Counsel concludes that there are no compelling or sufficiently unique military interests at stake that would justify a variation from the President's determination in February 2011, that Section 3 of DOMA is unconstitutional as applied to same-sex couples legally married under state law and would no longer be defended in court.

I believe the DoD General Counsel's conclusion is consistent with the November 30, 2010 Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell" and the discussion of benefits contained therein. Application of DOMA within the military services is a large and complex issue, and it implicates the ongoing national political debate regarding same-sex relationships.

While acknowledging that the Department of Justice may not defend the *McLaughlin* lawsuit, I am deeply concerned over the possibility and effect of injunctions in this case. As experienced in the *Log Cabin Republican* case, the issuance of broad injunctions against enforcement of DADT, followed by appellate court stays of such injunctions, caused significant confusion and uncertainty within the force. If this were to be repeated in the DOMA context, the potential for disruption is truly significant given the number and complexity of the benefits at issue. I believe it to be of paramount importance that the DoD General Counsel and Department of Justice develop a strategy now on how to best respond to such court orders.


J. W. Greenert



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MEMORANDUM FOR THE SECRETARY OF THE NAVY

Subj: McLaughlin, et al. v. Panetta, et al., No 1:11-cv-11905 (D. Mass)

You asked, via the Undersecretary of the Navy, for the Marine Corps position regarding whether DOJ should assert a special military exception to the Court's analysis of DOMA in the McLaughlin case.

The United States Marine Corps is sworn to support and defend the Constitution, and to faithfully execute the law. The Defense of Marriage Act is current law, and we will continue to obey the law and all implementing rules and regulations. We do not believe it necessary to assert that a military exception applies to the Court's analysis for DOMA in this case. In general, the Corps feels it is inappropriate to publicly debate the efficacy or appropriateness of the law, believing that to be a political and legislative function.

It is important to note that the Marine Corps feels strongly about providing support and benefits to all of our Marines, Sailors, and their families - no matter how defined - in such a way as to reduce family-based distractions and thereby increase combat effectiveness.

A handwritten signature in black ink, reading "RE Milstead, Jr.", is positioned above the typed name.

Robert E. Milstead, Jr.
Lieutenant General, USMC
Deputy Commandant
Manpower and Reserve Affairs